IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1252 of 2007

Chandra .. Petitioner

Vs

1. State of Tamilnadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The District Collector and
   District Magistrate
   Salem. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Ms.R.Subadra Devi

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner is the wife of the detenu Ramasamy, son of Ragupathy. The detenu was incarcerated by order dated 5.8.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger and confined at Central Prison, Salem. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention made in CMP.No.5/BLA/C2/2007, dated 5.8.2007, to

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set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. On 18.7.2007, the detenu was found selling illicit arrack to some persons near a thorny bush on Kattukottai Vadachennimalai Road. The Inspector of Police, Prohibition Enforcement Wing, Attur apprehended the detenu and seized the illicit arrack found therein. The samples were sent for chemical analysis and it was found that the arrack contained 5.8% mg atropine per 100 ml. A case was registered in Crime No.468/2007 under Section 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act.

3. The second respondent, taking note of the above case as a ground case and finding that there are four adverse cases in Crime Nos.182/2006, 565/2006, 279/2007 and 679/2007 on the file of Attur Prohibition Enforcement Wing for the offence punishable under Section 4(1)(aa), 4(1-A) of the Tamil Nadu Prohibition Act @ 4(1)(aaa) of the Tamil Nadu Prohibition Act and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the petitioner in her representation dated 24.8.2007 that the detenu was taken by the police on 15.7.2007 and not on 20.7.2007, as mentioned in the detention order, was not considered in the rejection order dated 8.9.2007.

5. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 20.7.2007 with respect to the ground case, in the representation of the petitioner dated 24.8.2007, the petitioner had specifically stated that the detenu was taken on 15.7.2007 by the Police and was kept under their custody till 20.7.2007 and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 8.9.2007 rejecting the representation of the petitioner dated 24.8.2007, had not considered the contention raised by the petitioner as to the arrest of the detenu.

6. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention dated 5.8.2007 is vitiated and

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the same is set aside. The detenu Ramasamy is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ATR

To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Collector and
   District Magistrate
   Salem.

3. The Superintendent
   Central Prison
   Salem.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.

1 cc to Mrs. R. Subadra Devi, Advocate, sr. 68383

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